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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION**

<p>NATIVE ECOSYSTEM COUNCIL,</p> <p>Plaintiff,</p> <p>vs.</p> <p>JOHN J. MEHLHOFF, State Director, BUREAU OF LAND MANAGEMENT, , an agency of the United States, DAVID BERNHARDT, Secretary, DEPART- MENT OF THE INTERIOR and CORNELIA HUDSON, Field Manager for the BLM's Dillon Field Office.</p> <p>Defendants.</p>	<p>COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF</p>
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I. INTRODUCTION

1. This is a civil action for judicial review under the citizen suit provision of the Administrative Procedure Act of the U.S. Bureau of Land Management's (BLM) authorizations, analyses, and lack thereof in the Dillon Field Office related to and regarding the (Amended) Red

Rock Lima Watershed Decision Notice and Finding of No Significant Impact approved after completion of an Environmental Assessment of potentially significant environmental impacts under the National Environmental Policy Act.

2. Plaintiff Native Ecosystems Council asserts that the challenged decision of Defendants authorizing livestock management and range improvements that include extensive sagebrush burning, conifer removal, and placement of water tanks and fencing in the Red Rock/Lima Watershed, located within the Dillon District of BLM's Montana and Dakotas Division, was arbitrary and capricious, an abuse of discretion, and/or otherwise not in accordance with law.
3. Defendants' actions or omissions violate the National Environmental Policy Act (NEPA), 42 U.S.C. 4331 *et seq.*, the Federal Land Policy and Management Act (FLPMA), 43 U.S.C. § 1701 *et seq.*, and the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 *et seq.*, by failing to prevent "unnecessary or undue degradation" of public lands, *Id.* § 1732(b), and/or failure to take a hard look at the direct, indirect and cumulative impacts of the final decisions implementing the landscape scale watershed assessment for Red Rock/Lima.
4. Plaintiff requests that the Court set aside the Watershed Project pursuant to 5 U.S.C. § 706(2)(A) and enjoin their implementation.

5. Plaintiff seeks a declaratory judgment, injunctive relief, the award of costs and expenses of suit, including attorney and expert witness fees pursuant to the Equal Access to Justice Act (EAJA) 28 U.S.C. § 2412, and such other relief as this Court deems just and proper.

II. JURISDICTION

6. This action arises under the laws of the United States and involves the United States as a Defendant. Therefore, this Court has subject matter jurisdiction over the claims specified in this Complaint pursuant to 28 U.S.C. §§ 1331, 1346.
7. An actual controversy exists between Plaintiffs and Defendants. Plaintiff and its supporters use and enjoy the Red Rock/Lima Watershed for hiking, fishing, hunting, photographing scenery and wildlife, and engaging in other vocational, scientific, spiritual, and recreational activities. Plaintiff and its members have an aesthetic and recreational interest in the natural landscapes of Southwest Montana, especially in viewing Sage Grouse and other sagebrush obligates in their natural environments, and in the recovery of robust populations of Sage Grouse in Southwestern Montana. Plaintiff's members intend to continue to use and enjoy these areas frequently and on an ongoing basis in the future.

8. The aesthetic, recreational, scientific, spiritual, and educational interests of Plaintiff's members have been and will be adversely affected and irreparably injured if Defendants are permitted to implement the Project. These are actual, concrete injuries caused by Defendants' failure to comply with mandatory duties under NEPA, FLPMA and the APA. The requested relief would redress these injuries and this Court has the authority to grant Plaintiff's requested relief under 28 U.S.C. §§ 2201 & 2202, and 5 U.S.C. §§ 705 & 706.
9. Plaintiff submitted timely written comments and objections concerning the Project in the available administrative review process; thus, it has exhausted its administrative remedies. Therefore, the challenges to these Projects are ripe for judicial review, and this Court has jurisdiction to review Plaintiff's APA claims.

III. VENUE

10. Venue in this case is proper under 28 U.S.C. § 1391(e) and LR 3.2(b) (1)(C). Defendant Mehlhoff resides within the Billings Division of the United States District Court for the District of Montana.

IV. PARTIES

11. Plaintiff NATIVE ECOSYSTEMS COUNCIL (NEC) is a non-profit Montana corporation with its principal place of business in Three

Forks, Montana. Native Ecosystems Council is dedicated to the conservation of natural resources on public lands in the Northern Rockies generally, and Southwest Montana in particular. Its members and supporters use and will continue to use the Dillon District of BLM and the surrounding areas in Southwest Montana for work and for outdoor recreation of all kinds, including fishing, hunting, hiking, horseback riding, and cross-country skiing.

12. NEC, along with its members and supporters, work, live and/or recreate throughout the public lands of the sagebrush-steppe ecosystem of Southwest Montana which is occupied by Greater sage-grouse; and they regularly visit and utilize the public lands in Southwest Montana to observe and study the Greater sage-grouse and the sagebrush-steppe ecosystem, including the Red Rock/Lima watershed. NEC and its supporters derive recreational, aesthetic, scientific, inspirational, educational, and other benefits from these activities, and have an interest in preserving the possibility of such activities in the future. Their use and enjoyment of the sage grouse depends on its continued existence within, and the scientifically sound management of, public lands within the Dillon District Planning Area of the BLM generally, and the Red Rock/Lima watershed specifically.

13. The decline of the Greater sage-grouse in Southwest Montana and across its range is of great concern to NEC, its members, and supporters; and the preservation and recovery of the species and its sagebrush-steppe habitat are highly important to NEC, its members, and supporters.
14. The BLM's unlawful actions adversely affect Native Ecosystems Council's organizational interests, as well as its members' use and enjoyment of Southwest Montana and the Dillon District Planning Area of BLM. Native Ecosystems Council brings this action on its own behalf and on behalf of its adversely affected members.
15. Defendant David Bernhardt is the Secretary of the U.S. Department of Interior, who has ultimate statutory authority and responsibility to comply with federal law in the management of the federal public lands at issue in this litigation. He is sued solely in his official capacity.
16. Defendant John J. Mehlhoff is the State Director for the Montana/Dakotas Bureau of Land Management.
17. Defendant Cornelia Hudson is the Field Manager for the BLM's Dillon Field Office, responsible for the approvals and implementation of the challenged decisions.

18. Defendant U.S. Department of Interior is an agency or instrumentality of the United States, charged by law with administering the public lands at issue in this litigation.
19. Defendant U.S. Bureau of Land Management (BLM) is an administrative agency within the U.S. Department of Interior, and is responsible for the health, diversity and productivity of public lands for the use and enjoyment of present and future generations.

V. LEGAL REQUIREMENTS

20. The National Environmental Policy Act (NEPA) is America's basic "charter for protection of the environment." 40 C.F.R. § 1500.1(a). The Council on Environmental Quality ("CEQ") promulgated regulations implementing NEPA, which are binding on all federal agencies. *Id.* §§ 1500-1518.4.
21. One of NEPA's fundamental goals is to "promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man." 42 U.S.C. § 4321. The scope of NEPA review is quite broad, including disclosure and consideration of all reasonable alternatives, 40 C.F.R. § 1502.14(a), and direct, indirect, and cumulative effects, *id.* § 1508(b). The federal agency must "[r]igorously explore and objectively evaluate all reasonable alternatives," "[d]evote substantial treatment to each alternative

- considered in detail including the proposed action.” *Id.* § 1502.14(a)-(c).
22. NEPA obligates the agency to make available to the public high-quality information, including accurate scientific analyses, expert agency comments, and public comments before decisions are made and actions are taken. The CEQ’s NEPA regulations require that information used to inform NEPA analysis “must be of a high quality,” and that “[a]ccurate scientific analysis . . . [is] essential to implementing NEPA.” *Id.* § 1500.1(b). The agency’s analysis must be based on professional and scientific integrity. *Id.* § 1502.24. To take the required “hard look” at a proposed action’s effects, an agency may not rely on incorrect assumptions or data.
23. The Federal Land Policy and Management Act (FLPMA) provides that BLM public lands “shall” be managed “for multiple use and sustained yield.” *Id.* § 1732(a). FLPMA further mandates that the Secretary of Interior “shall” take any action necessary to prevent “unnecessary or undue degradation” of public lands. *Id.* § 1732(b).
24. FLPMA’s definition of “multiple use” calls for “harmonious and coordinated management of the various resources without permanent impairment of the productivity of the land and the quality of the environment with consideration being given to the relative values of

the resources and not necessarily to the combination of uses that will give the greatest economic return or the greatest unit output.” *Id.* § 1702(c) (emphasis added). This prohibition on permanent impairment of the environment in FLPMA’s definition of multiple-use is unique and purposeful. Instead of using the definition of multiple-use from the Multiple-Use Sustained-Yield Act, as it did in enacting NFMA, Congress chose to weave this environmental protection mandate into FLPMA’s multiple-use provisions. *See* H. R. Rep. No. 94-583, 94th Cong. 1st Sess. (Dec. 18, 1975).

25. FLPMA directs that the Secretary of Interior (and hence BLM, which has been delegated the Secretary’s authority in management of the public lands) develop and periodically revise lands use plans, and adhere to those plans in management decision-making. *See* 43 U.S.C. § 1712(a) (Secretary “shall, with public involvement and consistent with the terms and conditions of this Act, develop, maintain, and, when appropriate, revise land use plans which provide by tracts or areas for the use of the public lands”); *id.* § 1732(a) (Secretary “shall manage the public lands under principles of multiple use and sustained yield, in accordance with the land use plans”).

26. When a land use plan is revised pursuant to FLPMA, existing resource plans and permits, contracts and other instruments are to be revised within a “reasonable period of time.” 43 C.F.R. § 1610.5-3.

**VI. BACKGROUND REGARDING THE NEED FOR
AMENDING DILLON RMP**

27. According to the BLM’s web site, “The Dillon Field Office manages over 900,000 acres of public lands and approximately 1.3 million acres of mineral estate within Beaverhead and Madison Counties in the southwest corner of Montana. Ranching and livestock grazing are important uses of the area. The wide open spaces provide excellent wildlife habitat and a wealth of dispersed recreation opportunities... Big game hunting, hiking, fishing, camping, and wildlife viewing are popular activities within the Dillon Field Office and the nearby Beaverhead-Deerlodge National Forest.”
28. BLM adopted a Resource Management Plan pursuant to FLPMA for the Dillon Field Office in February of 2006.
29. Greater sage-grouse (hereinafter, “sage grouse”) once numbered in the millions across the western U.S and Canada, but loss and fragmentation of their native sagebrush-steppe habitats have caused populations to decline precipitously over the last century. The current population of greater sage grouse is estimated at less than 10% of

- historic population levels; that is, sage grouse populations have experienced a 90% or more decline.
30. Sage grouse is a landscape species that uses a variety of seasonal habitats throughout the year. Sage grouse breeding sites (leks) and associated nesting and brood-rearing habitats, as well as winter concentration areas, are especially important to the species' life cycle. The grouse have high fidelity to leks, and most hens will nest within four miles of the lek where they mated.
31. In Southwest Montana, according to the terms of a 1998 Memorandum of Understanding between the Beaverhead-Deerlodge National Forest and Montana Fish, Wildlife and Parks, sage grouse may nest up to 23 miles from a lek.
32. Sage grouse also return to the same winter habitats year after year, even if these habitats have been degraded. Anthropogenic disturbance and disruptive activities, noise, and habitat degradation in breeding, nesting, brood-rearing, and winter habitats negatively affect sage grouse productivity.
33. Leading sage grouse experts and other scientists documented the declining trends of sagebrush habitats and sage grouse populations in the Conservation Assessment released by the Western Association of Fish and Wildlife Agencies ("WAFWA") in June 2004. *See*

CONNELLY ET AL., CONSERVATION ASSESSMENT OF
GREATER Sage grouse AND SAGEBRUSH HABITATS (WAFWA
June 2004) (“2004 Conservation Assessment”).

34. Sage grouse is a Montana listed “sensitive species” for purposes of BLM management.
35. BLM’s Sensitive Species Manual requires that “implementation-level plans identify appropriate outcomes, strategies, restoration opportunities, use restrictions, and management actions necessary to conserve and/or recover listed species, as well as provisions for the conservation of Bureau sensitive species. In particular, such plans should address any approved recovery plans and conservation agreements” Manual 6840 at .04D5. The Manual further requires that: “Implementation-level planning should consider all site-specific methods and procedures which are needed to bring the species and their habitats to the condition under which the provisions of the ESA are not necessary, current listings under special status species”.
36. Sage grouse are also a useful “umbrella species” for sagebrush habitats used by many other species of conservation concern, including a suite of sagebrush-dependent avifauna that would benefit from increased protection of sagebrush habitat. Montana Species of Concern that are associated with sagebrush include the sage sparrow,

- sage thrasher, Brewer's sparrow, pygmy rabbit, black-tailed jack rabbit, sage grouse, and Loggerhead shrike, while Montana Species of Concern associated with ecotones populated by sagebrush, juniper, and/or limber pine include the golden eagle, ferruginous hawk, Clark's nutcracker, pinyon jay, Cassin's finch, and goshawk.
37. In November 2004, responding to the threats documented in the 2004 Conservation Assessment, BLM adopted a “National Sage grouse Habitat Conservation Strategy,” which remains in effect and applicable to the challenged EISs and RODs. *See* BUREAU OF LAND MANAGEMENT, NATIONAL Sage grouse HABITAT CONSERVATION STRATEGY (U.S. Dep’t of Interior November 2004) (“2004 Conservation Strategy”). The Conservation Strategy emphasized using BLM’s land use planning process to conserve and restore sagebrush habitats in order to prevent further sage grouse declines and avoid ESA listing, and specified that BLM will use the best available science and other relevant information to develop conservation efforts for sage grouse and sagebrush habitats.
38. In 2010, the US Fish and Wildlife Service (FWS) listed the Greater Sage Grouse (GRSG) under the Endangered Species Act as “warranted, but precluded,” and identified the primary threats to GRSG as: (1) the present or threatened destruction, modification, or

- curtailment of habitat or range and (2) the inadequacy of existing regulatory mechanisms, specifically identifying the principal regulatory mechanisms for the BLM as conservation measures incorporated into land use plans.
39. Federal agencies manage over half the remaining sagebrush steppe. Although cooperation among federal and state agencies, private land owners, and others is important to conserve sage grouse and sagebrush habitat, the federal government and federal lands are key to ensuring conservation of the species.
40. In response to the 2010 determination by FWS that the listing of the GRSG was warranted, but precluded by other priorities, the BLM acknowledged: “Changes in management of GRSG habitats are necessary to avoid the continued decline of populations across the species’ range” and thus developed a landscape-level management strategy, based on the best available science, that was said to be “targeted, multi-tiered, coordinated, and collaborative.” This strategy was represented by BLM to the public as providing “the highest level of protection for GRSG in the most important habitat areas,” and as addressing the specific threats identified in the 2010 FWS “warranted, but precluded” decision along with the FWS 2013 Conservation Objectives Team (COT) Report. See: ROD S-2.

41. On August 22, 2011, BLM adopted the official charter for the “National Greater Sage grouse Planning Strategy.” The charter established various policy and technical teams to carry out the new planning process. These included a National Technical Team (“NTT”) to serve “as an independent, technical and science-based team to ensure the best information related to greater sage grouse management is fully reviewed, evaluated and provided to the BLM for consideration in the land use planning process.” BUREAU OF LAND MANAGEMENT NATIONAL GREATER Sage grouse PLANNING STRATEGY CHARTER 2 (Aug. 22, 2011).
42. The NTT was directed to “[i]dentify science-based management considerations for the greater sage grouse (e.g., conservation measures) that are necessary to promote sustainable sage grouse populations, and which focus on the threats in each of the management zones.” *Id.*
43. In carrying out the National Greater Sage grouse Planning Strategy, BLM and the Forest Service have publicly and repeatedly committed to *utilizing* - not just “considering” - the best available science in their analysis and adoption of proposed sage grouse conservation measures.
44. On December 21, 2011, BLM released the NTT’s “Report on National Greater Sage grouse Conservation Measures” (“NTT Report”), which

Report has been found by a federal court to “contain[] the best available science concerning the sage grouse.” See: Memorandum Decision and Order, *Salazar*, 2012 WL 5880658 at *2 (Nov. 21, 2012) (No. 08-cv-516-BLW).

45. The NTT Report avers that BLM has adopted a “new paradigm” for its public lands management to ensure that sage grouse populations and habitats receive scientifically-based management protection, as follows:

Through the establishment of the National Sage grouse Planning Strategy, BLM has committed to a new paradigm in managing the sagebrush landscape...Land uses, habitat treatments, and anthropogenic disturbances will need to be managed below thresholds necessary to conserve not only local sage grouse populations, but sagebrush communities and landscapes as well. Management priorities will need to be shifted and balanced to maximize benefits to sage grouse habitats and populations in priority habitats.

SAGE GROUSE NATIONAL TECHNICAL TEAM, A REPORT ON NATIONAL GREATER Sage grouse CONSERVATION MEASURES 6-7 (Dec. 21, 2011).

46. The NTT Report emphasized that the designation and protection of priority sage grouse habitats is key to conserving the greater sage grouse:

The overall objective is to protect priority sage grouse habitats from anthropogenic disturbances that will reduce distribution or abundance of sage grouse. Priority sage

grouse habitats are areas that have the highest conservation value to maintaining or increasing sage grouse populations. These areas would include breeding, late brood-rearing, winter concentration areas, and where known, migration or connectivity corridors.

Id. at 7.

47. The NTT Report further stated that it will be necessary to achieve certain “sub-objectives” for sage grouse priority habitats, including:
“To maintain or increase current populations, manage or restore priority areas so that at least 70% of the land cover provides adequate sagebrush habitat to meet sage grouse needs.” *Id.* at 7-8.
48. The NTT Report identified specific “Conservation Measures” by categories of management actions, which “are designed to achieve population and habitat objectives stated in this report.” *Id.* at 11-31.
49. In September 2015, BLM issued a Record of Decision (ROD) and Approved Resource Management Plan Amendments (ARMPAs) for the Great Basin GRSG Sub-Regions of Idaho and Southwestern Montana. These ARMPAs established GRSG habitat management direction that was designed to avoid and minimize disturbances in GRSG habitat management areas. This new direction was said to accomplish the following:

- i. Eliminate most new surface disturbance in the most highly valued sagebrush ecosystem areas identified as Sagebrush Focal Areas;
 - ii. Avoid or limit new surface disturbance in Priority Habitat Management Areas, of which Sagebrush Focal Areas are a subset; and,
 - iii. Minimize surface disturbance in General Habitat Management Areas.
50. After preparing an Environmental Impact Statement on the ARMPAs, BLM concluded that:
- The cumulative effect of these measures is to conserve, enhance, and restore GRSG habitat across the species' remaining range in the Great Basin Region and to provide greater certainty that BLM resource management plan decisions in GRSG habitat in the Great Basin Region can lead to conservation of the GRSG and other sagebrush-steppe associated species in the region. The targeted resource management plan protections presented in this ROD and ARMPAs apply not only to the GRSG and its habitat but also to over 350 wildlife species associated with the sagebrush-steppe ecosystem; this is widely recognized as one of the most imperiled ecosystems in North America.
51. On September 15, 2015, Defendant State Director for BLM approved the "Idaho and Southwestern Montana Greater Sage grouse Approved RMP Amendment" (ARMPA), which amended the Dillon District RMP of 2006, allocating habitat management areas for GRSG in Southwestern Montana. The stated "purpose and need" for the RMP

- Amendment was to respond to the USFWS's March 2010 "warranted, but precluded" ESA listing petition decision for GRSG; that is, to avoid listing of the GRSG as threatened or endangered.
52. The ARMPA supplements, or is in addition to, the MANAGEMENT PLAN AND CONSERVATION STRATEGIES FOR SAGE GROUSE IN MONTANA ("Montana SG Plan") which was finalized in 2005 pursuant to a Memorandum of Understanding between federal land management agencies, including BLM, and member states of WAFWA, including Montana.
53. The ARMPA amends the Dillon RMP according to the following habitat allocations: "GRSG habitat on BLM-administered lands in the decision area consists of lands allocated as priority habitat management areas (PHMA), important habitat management areas (IHMA), and general habitat management areas (GMHA)."
54. PHMA, IHMA, and GHMA are defined as follows:
- i. PHMA—BLM-administered lands identified as having the highest value to maintaining sustainable GRSG populations. Areas of PHMA largely coincide with areas identified as priority areas for conservation in the USFWS's COT report. These areas include breeding, late brood-rearing, winter concentration areas, and migration or connectivity corridors.

- ii. IHMA—BLM-administered lands that provide a management buffer for PHMA and connect patches of PHMA. IHMA encompass areas of generally moderate to high conservation value habitat and populations but that are not as important as PHMA. There are no IHMA designated within southwestern Montana.
 - iii. GHMA—BLM-administered lands where some special management will apply to sustain GRSG populations; areas of occupied seasonal or year-round habitat outside of PHMA or IHMA.
55. The COT Report emphasized that “rangeland fire (both lightning-caused and human-caused fire) in sagebrush ecosystems is one of the primary risks to the greater sage grouse, especially as part of the positive feedback loop between exotic invasive annual grasses and fire frequency” (FWS 2013).
56. Prescribed fire is a “human-caused fire” within the meaning of the COT Report.
57. One of the “Key Management Responses from the Great Basin Region GRSG ARMPAs” to the “Threats to GRSG and its Habitat (from COT Report)” referenced in the Record of Decision was to “Restrict the use of prescribed fire for fuel treatments.” Table 1-4, p.

- 1-19. Specifically, according to the ROD: “[P]rescribed fire will not be used in sagebrush steppe. The exception would be if the NEPA analysis for the burn plan were to provide a clear rationale for why alternative techniques were not selected as a viable option. The analysis also would need to explain how GRSG habitat management goals and objectives would be met by its use and how the COT Report objectives would be met. It would require a risk assessment to address how potential threats to GRSG habitat would be minimized.” ROD, p. 1-27.
58. Table 2-3 of the ARMPA sets forth the “Estimated Acres of Treatment Needed within a 10-Year Period to Achieve Vegetation Objectives on BLM-Administered Lands.” ARMPA, p. 2-17. According to this table, there is no need for any treatments in Dillon via prescribed fire (MD Fire 31) or to restore grasslands (MD Veg 2). (“MD” refers to Management Direction).
59. Of particular relevance to this litigation, MD Fire 31 (ARMPA 2-22) provides that “If prescribed fire is used in GRSG habitat, the NEPA analysis for the Burn Plan will address: why alternative techniques were not selected as a viable options; how GRSG goals and objectives will be met by its use; how the COT Report objectives will be

addressed and met; [and], a risk assessment to address how potential threats to GRS habitat will be minimized.”

60. The “COT Report objectives” that must be addressed and met, pursuant to the ARMPA, prior to approving prescribed burns in GRS habitat include the following “Conservation Objective” (COT, p. 40) for fire:

Retain and restore healthy native sagebrush plant communities within the range of sage grouse. Fire (both lightning-caused and human-caused fire) in sagebrush ecosystems is one of the primary risks to the greater sage grouse, especially as part of the positive feedback loop between exotic invasive annual grasses and fire frequency. As the replacement of native perennial bunchgrass communities by invasive annuals is a primary contributing factor to increasing fire frequencies in the sagebrush ecosystem, every effort must be made to retain and restore this native plant community...

61. To address and meet the Conservation Objective for Fire referenced in the preceding paragraph, one of the “Conservation Measures” listed in the COT requires BLM to: “Eliminate intentional fires in sagebrush habitats, including prescribed burning of breeding and winter habitats.” Ibid.
62. The Montana SG Plan adopted in 2005 recognized a need to identify remaining breeding and winter habitats in Montana.
63. According to Management Decision SSS 7 in the AMRPA, Sage Grouse habitat must be assessed during project-level NEPA analysis

within the management area designations, and the “effects will be evaluated based on the habitat and values affected.”

64. Another Conservation Measure related to maintaining and restoring healthy GRSG habitat is to: “Reduce or eliminate disturbances that promote the spread of [] invasive species,” including “precluding the use of treatments intended to remove sagebrush.” COT, pp. 42-43.
65. According to the COT: “The intentional removal or treatment of sagebrush (using prescribed fire, or any mechanical and chemical tools to remove or alter the successional status of the sagebrush ecosystem) contributes to habitat loss and fragmentation, a primary factor in the decline of sage grouse populations. Removal and manipulation of sagebrush may also increase the opportunities for the incursion of invasive annual grasses, *particularly if the soil crust is disturbed* (Beck et al. 2012). Although many treatments are often presented as improving sage grouse habitats, data supporting the positive impacts of sagebrush manipulation on sage grouse populations is limited (Beck et al. 2012).” (emph. added) COT, p. 44.
66. Soil crust is disturbed by grazing cows in sagebrush habitats.
67. The Montana SG Plan acknowledges that Big Mountain Sagebrush does not require fire, and that best available science supports

arguments against use of prescribed fire to manage Sage Grouse habitats.

68. The Montana SG Plan acknowledges that appearance of even-age or decadence in sagebrush habitat is often “deceiving” and not, of itself, an indication of the need to aggressively treat sagebrush habitat for the purpose of increasing or introducing diversity of age classes.
69. The COT establishes the following Conservation Objective: “Avoid sagebrush removal or manipulation in sage grouse breeding or wintering habitats.” Ibid.
70. Related to the Conservation Objective in the preceding paragraph, the COT provides: “Exceptions to this can be considered where minor habitat losses are sustained while implementing other habitat improvement or maintenance efforts (e.g., juniper removal) and in areas used as late summer brood habitat (Connelly et al. 2000). Appropriate regulatory and incentive-based mechanisms must be implemented to preclude sagebrush removal and manipulation for all other purposes.” Ibid.

VII. Red Rock/Lima Project

71. The Red Rock/Lima Environmental Assessment (“RRL-EA”) was issued on May 22, 2108, and was tiered to the EIS for the Dillon RMP. It proposes reauthorizing 20 allotments across 28,217 BLM

- administered acres that were determined to be meeting all standards for rangeland health, along with slashing conifers and burning sagebrush habitat on approximately 1,913 acres, or just under 3 square miles, as well as removal of conifers along 8 miles of streams, mostly within occupied sage grouse habitat.
72. The RRL-EA was adopted by Decision Notice (“DN”) and Finding of No Significant Impact (“FONSI”) in December of 2018, after updating the decision documents to account for the AMRPA that was adopted more than three years previously.
73. The RRL-EA fails to take a hard look at potential direct, indirect and cumulative impacts of treatments approved in both woodlands and ecotones on wildlife that is associated with those habitats, including but not limited to the association of wildlife and conifers in ecotone habitats (limber pine, juniper, etc.), impacts to snag-dependent species and old growth obligate, and/or impacts to Montana Species of Concern such as pinyon jay, Clark’s nutcracker, Loggerhead shrike, Ferruginous hawk, and golden eagle.
74. The RRL-EA fails to take a hard look at potential direct, indirect and cumulative impacts of treatments approved in ecotones on hiding cover and security for big game.

75. The RRL DN and EA fail to demonstrate compliance with the ARMPA, including but not limited to Conservation Objectives and Measures, such as those related to fire, exotics/invasive species, and the unintentional removal of sagebrush habitats through prescribed treatments.
76. There is a clear relationship, supported by best available science, between prescribed fires and the invasion/spread of treated areas by exotics, such as cheatgrass.
77. There is currently a significant expansion of cheatgrass and other invasive species of plants on public lands in Southwest Montana, including ongoing treatments of approximately 2,500 acres in the Dillon Field Office.
78. Plaintiff has provided documentary evidence to BLM of cheatgrass invasion in the landscapes of Southwest Montana following prescribed burns.
79. The RRL DN and EA fail to demonstrate the extent of the invasion by cheatgrass in the analysis area, the association of same with management activities, the relative levels of success and failure in treating cheatgrass invasions (as well as other invasive species), and sufficient budgetary resources for reversing the trends of invasives/exotics associated with grazing and prescribed fire.

80. BLM has failed to take a hard look at the tradeoffs between conifer “encroachment” and cheatgrass invasion, as well as the cumulative impacts of grazing, prescribed fires, new road construction, and related management activities on the natural and human environments.
81. The RRL DN and EA fail to include the required risk assessment in accordance with the criteria set forth in the ARMPA and related documents incorporated by reference.
82. The RRL DN and EA fail to disclose and analyze the potential direct, indirect and cumulative impacts of approved treatments on existing levels of sage grouse nesting habitat, late-summer brood rearing habitat, and winter habitat.
83. The RRL DN and EA fail to demonstrate that the treatments approved will maintain 80% of nesting (breeding) habitat, at least 40% of late summer/brood-rearing habitat, and 80% of winter habitat for affected sage grouse habitats.
84. The RRL-EA fails to include inventory data, maps, and/or other information disclosing the location of sage grouse nesting habitat, even though such information is available to BLM.
85. While the RRL DN and EA assert that conifer encroachment into sagebrush and grassland habitats is extensive, no baseline data is

- provided, no habitat objectives are disclosed, no discussion of the relative benefits of the various habitats to wildlife is analyzed, and there is no discussion of the forage values associated with ecotones in their undisturbed (dynamic) state.
86. The RRL-EA failed to take a hard look at the continuing problem of aspen regeneration, especially as related to browsing by livestock.
87. Nature is not static, and conifer “encroachment” is a term used to describe a natural process by which the seeds from conifers are distributed by associated wildlife species. In this time of accelerating climate change, such processes need to be considered as nature’s way of adapting to the unnatural influences of anthropogenic climate disruption.
88. The RRL DN and EA approve treatments in Wilderness Study Areas without taking a hard look at the potential impacts of exotic/invasive species associated with such treatments, including the results of past monitoring required by the 2007 RRL-EA, the value of conifers, ecotones, and migration of conifers to maintaining wilderness characteristics, and the loss of solitude associated with treatment programs.
89. The RRL DN and EA approve treatments in Wilderness Study Areas without complying with the BLM WSA non-impairment standard, and

without providing “clearly articulated, well-supported management objectives and available scientific information,” including but not limited to the following: clear evidence that treatments are necessary; choosing the least disruptive means of treatment; and, supporting the decision with past monitoring results and assurances that future monitoring is in place prior to treatments.

90. Removing junipers to promote grazing has been a long-standing management practice on public lands recognized in scientific studies like *Balda and Masters* (1980).
91. The total cumulative amount of sagebrush/juniper treatments that include prescribed burning exceeds 7,000 acres/10 square miles.
92. The 2007 RRL-EA that accompanied renewal of grazing permits included a commitment by BLM Dillon Field Office to mitigate any potentially significant adverse impacts from treating over 1600 acres of sagebrush treatments, including over 1000 acres in the Wilderness Study Area, through surveys and post-treatment monitoring, including but not limited to: managing 70% of mountain big sagebrush communities to sustain sage grouse populations; preventing the spread of noxious and invasive species, such as cheatgrass; winter use big game utilization studies; delineation of seasonal habitats of sage grouse as well as habitats of pygmy rabbits; sensitive wildlife species

- habitat utilization; ferruginous hawk nest occupancy and productivity; photographic documentation of treatments within the WSA.
93. The 20017 RRL-EA upon which the FONSI is based includes no information on the results of the monitoring of impacts approved pursuant to the 2007 RRL-EA.
94. The RRL-EA fails to disclose and analyze the potential cumulative removal of sagebrush habitat from treatments approved in 2007 and 2017.
95. In spite of extensive treatments approved within winter range of big game species, including a 3,222 acre (5 square mile) block of sagebrush/conifer burning, no habitat objectives are identified in the RRL-EA for winter habitat for elk and mule deer.
96. Significant landscape impacts across SW Montana from habitat degradation have been documented for big game security, with over half of the hunting districts reported to be exceeding population objectives due to elk displacement during hunting season.
97. In spite of many miles of new roads approved to facilitate logging, the RRL-EA fails to quantify potential adverse impacts of increased roads on elk security and habitat effectiveness, and fails to discuss the potential for displacement of elk.

98. In addressing the potential for impacts of logging on species associated with old forest and sensitive to disturbance from logging, BLM relies on outdated snag habitat guidelines.
99. The FONSI fails to address existing scientific controversies and associated uncertainties as to potential impacts concerning burning sagebrush habitats and fire return intervals for juniper/sagebrush habitats.
100. The RRL-EA and DN fail to disclose and analyze the potential adverse impacts of water developments on sage grouse and the increased potential for predation and the spread of invasive species such as cheatgrass in the project area generally, and in the WSA in particular.
101. The RRL-EA and DN fail to take a hard look at the potential direct, indirect and cumulative impacts of fencing on sage grouse, or to adopt adequate mitigation measures to reduce such impacts.

VII. CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF: Failure to Comply with NEPA

1. All the preceding paragraphs are incorporated into this claim.
2. The RRL-EA and DN failed to take a hard look at the direct, indirect, and cumulative impacts of the approved treatments and infrastructure

additions on sage grouse, sagebrush habitats, riparian areas, ecotones, and woodland habitats, together with the wildlife species associated with these habitats, in part because it was not based upon accurate, high quality scientific analysis, and as a consequence relied upon incorrect assumptions and data.

3. The RRL-EA and DN is arbitrary and capricious, as it failed to adequately consider a reasonable range of alternatives, including a no-grazing or significantly reduced grazing alternative, failed to explain how the impacts of the project would not be significant, failed to reconcile conflicting reports, and failed to consider important aspects of the problems (*supra.*) associated with approved treatments.
4. The RRL-EA and DN fail to disclose and consider the potential adverse impacts of new road construction, conifer removal, and fuels reduction on big game security, habitat effectiveness, and hiding/thermal cover for big game.
5. For many decades in SW Montana and throughout the Western U.S., BLM and others treated sagebrush habitats as an impediment to agriculture and livestock production, and aggressively removed and/or degraded extensive areas of sagebrush habitat through burning and application of herbicides, to the significant detriment of sage grouse and many other sagebrush obligate species.

6. The RRL-EA and DN fail to disclose and analyze the potential for adverse cumulative impacts from continuing to approve regular slash and burn treatments in sagebrush habitat, in part due to the failure to conduct monitoring of such impacts the agency committed itself to in the 2007 RRL-EA and DN.
7. The RRL DN fails to acknowledge and address existing scientific controversies and the associated uncertainty of impacts concerning the effects of continued burning of sagebrush habitats and fire return intervals of sagebrush/juniper habitats.

**SECOND CLAIM FOR RELIEF:
Failure to Comply with FLPMA**

1. All the preceding paragraphs are incorporated into this claim.
2. The RRL-EA and DN do not demonstrate compliance with the ARMPA, including but not limited to demonstrating compliance with Conservation Objectives and related Conservation Measures set forth in the COT Report, not demonstrating compliance with the general prohibition on burning breeding and/or wintering sage grouse habitats, not preparing an adequate risk assessment prior to approving prescribed burns in priority sage grouse habitat, and not demonstrating the efficacy of the 50% utilization standard for the purpose of providing adequate cover in sage grouse nesting and brood-rearing habitat.

3. The DN/FONSI for the STRW final decision is inconsistent with FLPMA's mandate against permanent impairment of the productivity of the land, in part because it fails to address the potential, according to best available science, that the spread of invasive like cheatgrass associated with approved treatments, grazing and roads, as well as the shorter fire return intervals associated with cheatgrass, is irreversible.
4. The RRL-EA and DN is inconsistent with FLPMA's mandate against permanent impairment of the productivity of the land, in part because it fails to comply with the non-impairment standard and related BLM policies and guidelines for managing Wilderness Study Areas.

VIII. RELIEF REQUESTED

For all of the above-stated reasons, Plaintiff requests that this Court award the following relief:

- A. Declare that the BLM has violated and is in continuing violation of the law;
- B. Vacate the challenged Decision;
- C. Permanently enjoin implementation of treatments approved in the challenged decision;
- D. Award Plaintiffs their costs, expenses, expert witness fees, and reasonable attorney fees under EAJA; and

E. Grant Plaintiffs any such further relief as may be just, proper, and equitable.

Respectfully submitted this 10th day of June, 2019.

/s/ Thomas J. Woodbury
Thomas J. Woodbury
FOREST DEFENSE, PC
Attorney for Plaintiffs

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Native Ecosystems Council

(b) County of Residence of First Listed Plaintiff Gallatin

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Thomas J. Woodbury, Forest Defense, P.C.
618 Rollins St., Missoula, MT 59801
(650) 238-8759**DEFENDANTS**JOHN J. MEHLHOFF, State Director, the BUREAU OF LAND
MANAGEMENT, DAVID BERNHARDT, Secretary of the Interior, and
CORNELIA HUDSON, Field Manager, Dillon Field OfficeCounty of Residence of First Listed Defendant Yellowstone

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

U.S. Attorney

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question
(U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS		FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input checked="" type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTIONCite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
National Environmental Policy Act & Federal Lands Policy & Management Act

Brief description of cause:

Challenge to approved management of Greater sage-grouse, sagebrush, riparian, and ecotone habitats

VII. REQUESTED IN COMPLAINT:☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

06/10/2019

SIGNATURE OF ATTORNEY OF RECORD

/s/ Thomas J. Woodbury

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

Case 1:19-cv-00067-SPW-TJC Document 1-1 Filed 06/10/19 Page 2 of 2
INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
 - (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
 - (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
- United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
- United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
- Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
- Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
- Original Proceedings. (1) Cases which originate in the United States district courts.
- Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
- Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
- Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
- Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
- Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
- Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
- PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7.** Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
- Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
- Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.